

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Market Dominant Product Prices
First-Class and Standard Mail
Discover Financial Services

Docket No. MC2011-19

Market Dominant Product Prices
Discover Financial Services (MC2011-19)
Negotiated Service Agreement

Docket No. R2011-3

Motion for Leave to Reply to the Ex Parte
Comments of Discover Financial Services

(May 7, 2013)

Since the Public Representative last filed comments, Discover Financial Services (DFS), through its counsel, Robert Brinkman, and through the senior manager of its marketing department, Cheryl O' Day, published two *ex parte* communications addressing the merits of the issues in this docket. Identifying himself as Legislative Counsel for the League of Postmasters, Mr. Brinkman authored an article entitled "Who Moved My Cheese?" which appears at pages 9-12 of the May issue of the Postmasters Advocate. The majority of this article challenges this Public Representative's conclusions that Standard Regular letter mail is a monopoly product and is price inelastic. On April 29, 2013, Cheryl O'Day, DFS's Senior Manager, Marketing Operations, sent a letter to the Chairman which was copied to the other Commissioners. Ms. O'Day's letter challenges this Public Representative's conclusions that the Discover NSA did not comply with section 3622(c)(10) in Contract Year One and challenges the Commission's apparent agreement with that conclusion in the FY 2012 Annual Compliance Determination.

Both *ex parte* communications explicitly rebut the factual arguments and legal conclusions in the Public Representative's most recent comments. These factual assertions regarding DFS's price elasticity for postal products are new and the legal ramifications of those assertions are central issues in this docket. The Public Representative's reply that accompanies this motion responds to those new assertions, and incorporates highly relevant information from a White Paper recently issued by the Inspector General of the United States Postal Service. Therefore, the Public Representative moves that the accompanying reply to the DFS's recent *ex parte* communications be accepted.

Respectfully submitted

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